No. 397.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

PENNSYLVANIA RAILROAD COMPANY,
Petitioner,

vs.

GEORGE M. DAY, Administrator ad Litem of the Estate of Charles A. DePriest,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER, THE PENNSYLVANIA RAILROAD COMPANY.

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OPINIONS BELOW.

The opinion of the United States District Court for the District of New Jersey (R. 19) is reported at 155 F. Supp. 695.

The opinion of the United States Court of Appeals for the Third Circuit (R. 32) was handed down on August 12, 1958, and is reported at 258 F. 2d 62.

JURISDICTION.

The judgment of the United States Court of Appeals for the Third Circuit sought to be reviewed was entered on August 12, 1958. Petitioner's petition for writ of certiorari was filed on September 24, 1958 and granted on November 10, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. §1254 (1), 62 Stat. 928.

STATUTES INVOLVED.

This suit involves Section 3, First of the Railway Labor Act, as amended (45 U. S. C. §153 First; 48 Stat. 1189) which provides for the establishment and jurisdiction of the National Railroad Adjustment Board; and Sections 1 and 2 of the Act, as amended (45 U. S. C. §§151, 151a, 152; 48 Stat. 1185, 1186, 54 Stat. 785, 786, 64 Stat. 1238), the former being a definition of terms and the latter a statement of the general purposes and duties to settle disputes. Pertinent provisions of Sections 1, 2 and 3 of the Act are set forth in the Appendix, pp. 35-43, infra.

QUESTION PRESENTED.

Does a District Court of the United States have jurisdiction over the subject matter of a claim, first made by respondent's decedent while he was still an employee of the petitioner, for extra pay for services performed as a railroad employee, in a dispute arising under an existing collectively bargained railway labor agreement, solely because the suit on the claim is brought by the employee after he had left active service; or is exclusive jurisdiction over such claim and dispute in the National Railroad Adjustment Board established under the Railway Labor Act?

STATEMENT OF THE CASE.

Respondent's decedent, Charles A. DePriest, had been employed by the petitioner as a railroad fireman, then locomotive engineer, from May 13, 1918 until March 10, 1955, at which time he resigned and applied for his annuity (Complaint, para. 5; R. 2).

One month later, on April 11, 1955, Charles A. DePriest, then a New Jersey resident, filed a complaint in the United States District Court for New Jersey against the petitioner, a Pennsylvania corporation, seeking to recover from petitioner extra pay to which he claimed to be entitled from the petitioner railroad employer for services performed as a railroad employee under a collective bargaining agreement.

DePriest alleged that on March 1, 1941, the petitioner and the Baltimore and Eastern Railroad Company, as employers, and the Brotherhood of Locomotive Engineers, a labor union, had entered into an agreement for the benefit of locomotive engineers employed by the two railroads in both yard and road service, of which DePriest was one (Complaint, para. 6; R. 2). The agreement provided, inter alia, that:

> "4-0-2. (a) Where regularly assigned to perform service within switching limits, yard engineers shall not be used in road service beyond such switching limits when road engineers are available, except in case of emergency. When yard engineers are used in road service beyond their switching limits under the conditions just referred to, they shall be paid miles or hours, whichever is greater, with a minimum of one hour, for the class of road service performed beyond

their switching limits, in addition to their regular day's pay and without any deduction therefrom for the time consumed in said service" (Complaint, para. 6; R. 2).

DePriest claimed that between February 1, 1948, and the time of his retirement he had performed road service outside his switching limits on between 1,000 and 1,500 occasions on the trackage of the Baltimore and Ohio Railroad on the Delaware River Waterfront which entitled him to compensation in the sum of $27,000 under his interpretation of the railway labor agreement aforesaid (Complaint, para. 10; R. 4). Under petitioner's interpretation of the contract DePriest did not go beyond his switching limits on such occasions and did not perform road service (Answer, para. 7, 9 and Fourth Defense; R. 5, 6).

DePriest also alleged that prior to his retirement his claims were denied by the Road Foreman of Engineers, his then immediate superior, by the Division of Superintendent (sic) under whom he worked and by the General Manager of the Eastern Region of the Pennsylvania Railroad Company who is the Chief Operating Officer of the defendant in the region where DePriest was employed (Complaint, para. 10; R. 4). DePriest then alleged that upon the occurrence of his retirement the National Railroad Adjustment Board had no jurisdiction of the matter and he accordingly was asserting his claims in this action in the District Court (Complaint, para. 10; R. 4).

Petitioner moved to dismiss the action for lack of jurisdiction over the subject matter upon the grounds that (1) this action involves the construction of a contract between a railroad employer and a labor union, and under the provisions of the Railway Labor Act, the National Railroad Adjustment Board has exclusive jurisdiction of said action and (2) the application of DePriest for an annuity under the Railroad Retirement Act and his voluntary relinquish-

ment of the right to return to service did not deprive the Board of its exclusive jurisdiction over the subject matter of this claim for wages for services allegedly performed as a railroad employee (R. 26).

In support of its motion petitioner filed an affidavit stating that claims for alleged additional wages due similar to those being advanced by DePriest were filed against petitioner by two engineers, which after their death, were progressed by their administrators to the First Division of the National Railroad Adjustment Board where they were docketed and awaiting decision (R. 28). Petitioner also filed in support of the motion a certified copy of an award of the National Railroad Adjustment Board, First Division, wherein the Board took jurisdiction over a pay claim by a retired employee (R. 29).

The motion to dismiss was denied with leave to the petitioner to request a reasonable stay of the trial pending determination of like issues between the other claimants and the petitioner then before the National Railroad Adjustment Board (R. 31). The petitioner then filed its answer generally denying DePriest's claims and asserting eight defenses thereto, including the defenses that the Court was without jurisdiction over the subject matter and that the complaint failed to state a claim upon which relief could be granted (R. 5-8).

Petitioner then moved for summary judgment on the ground that administrative remedies had not been exhausted or in the alternative sought an order staying proceedings pending a decision by the National Railroad Adjustment Board interpreting the basic agreement involved in this action (R. 20).

The District Court, after hearing the motions held that the action involved the construction of a contract between a railroad employer and a labor union which, under the provisions of the Railway Labor Act, was exclusively for

determination by the National Railroad Adjustment Board, a requirement not affected by DePriest's voluntary retirement, and that "the interpretation of the contract here will affect working conditions of present employees and may lead to labor strife, the very type of friction the National Railway Labor Act was designed to prevent." 145 F. Supp. 596, 599. On September 28, 1956, an order was entered by the District Court staying all proceedings until the Board decided the cases before it involving the same provisions of the contract in suit (R. 20). DePriest appealed from this order to the United States Court of Appeals for the Third Circuit. DePriest died on February 11, 1957, and his administrator was substituted as plaintiff-appellant in the action. The Court of Appeals dismissed the appeal for want of appellate jurisdiction. 243 F. 2d 485. After argument in the Court of Appeals in this matter, but before the decision to dismiss the appeal for want of appellate jurisdiction, the National Railroad Adjustment Board, First Division, made three awards denying claims in matters involving the interpretation of the contract here involved with respect to the same issue.

Petitioner then again moved the District Court to dismiss the complaint on the ground that the Court lacked jurisdiction of the subject matter (R. 8). In support of the motion petitioner attached certified copies of the three awards of the Board to which reference is above made (R. 9-18).

The District Court determined that the issue involved was one of interpretation of a collective bargaining railway labor agreement and that the question of interpretation was exclusively for the National Railroad Adjustment Board, 155 F. Supp. 695 (R. 21). The District Court then entered an order dismissing the complaint for want of jurisdiction over the subject matter (R. 25).

The Court of Appeals for the Third Circuit in the decision

appealed from here vacated this order of the District Court and remanded the case for further proceedings (R. 40). It held that the requirements of an ordinary diversity action were met and that the Railway Labor Act did not deprive the District Court of jurisdiction over a claim by a retired employee for additional compensation allegedly owing under collectively bargained railway labor agreement, for services performed as a railroad employee. It relied upon the authority of *Moore v. Illinois Central R. Co.*, 312 U. S. 630 (1941), which involved a common law action for wrongful discharge. The Court of Appeals said: "We see no reason to distinguish between this situation and one to recover for wrongful discharge." Thus, the District Court was held to have jurisdiction of this claim for extra pay, which is based on the interpretation of a railway labor agreement.

SUMMARY OF ARGUMENT.

The decision of the Court of Appeals below should be reversed by this Court because:

1. The 1934 Amendments to the Railway Labor Act provided in Section 3 for the establishment of the National Railroad Adjustment Board and made use of its orderly procedures mandatory for the adjustment of disputes growing out of the interpretation of collectively bargained railroad labor agreements covering rules, rates of pay and working conditions. This Court has consistently held that these means provided by the Act for determining disputes concerning this subject matter are compulsory and that the exclusive remedies provided by the Act oust the courts of jurisdiction.

2. The only exception heretofore recognized to the exclusive jurisdiction of the National Railroad Adjustment Board to interpret railroad labor agreements is where a railroad employee has been dismissed from service, has accepted his discharge as final, and has brought a common law or statutory action in court for damages for wrongful discharge.

3. The subject matter of a dispute over extra pay for railroad work which involves the interpretation of a railway labor agreement is exactly the same whether the claimant is an active employee or inactive and retired. Voluntary retirement by the employee from active service does not change the nature of his claim for extra pay under an agreement, nor the implications in the railroad industry of its determination. The Adjustment Board exercises its jurisdiction over claims by retired employees such as respondent, as well as over claims by deceased employees. It can give a complete remedy in extra compensation cases, such as this, by awarding back pay. Thus, the Railway Labor Act provides an administrative procedure for determining pay claims under railroad collective bargaining agreements. The fact that the dispute is pressed by respondent, rather than a presently active employee, does not create jurisdiction in the courts to decide this administrative question. Court jurisdiction over this dispute, furthermore, will render uncertain the application to other claimants of the contract provision in issue, and cause unrest and dissatisfaction contrary to the purposes of the Act.

4. Unless the courts, both federal and state, are to be thrown wide open for the interpretation of collectively bargained agreements in the railroad industry, the inactive status of a railroad employee cannot vest the courts with jurisdiction over pay claims within the power of the Ad-

justment Board to determine. There are a host of such prospective claimants among employees who retire, resign or are dismissed. In addition, this class of claimants might be extended to include inactive employees on furlough, out of service because of illness or disability, absent in military service, or out of active service for any other reason. It is submitted that if the status of the claimants vested jurisdiction in the courts, uniformity of interpretation of the collective bargaining agreement would be a forlorn hope, confusion would rule in the railroad industry, and the results Congress sought to attain by establishing the Adjustment Board would be thwarted.

ARGUMENT.

I. Under the Railway Labor Act the National Railroad Adjustment Board has exclusive jurisdiction to hear and determine disputes growing out of the interpretation of agreements covering rates of pay for work on the railroads.

In 1934 the prior unsuccessful voluntary procedures provided by Section 3 of the Railway Labor Act of 1926 (44 Stat. 577) to settle disputes growing out of the interpretation of railroad labor agreements were replaced by Congress with an orderly and compulsory procedure.

By the 1934 amendments to the Railway Labor Act, Congress made use of the boards established under the Act mandatory, to the exclusion of resort to the courts in the first instance, if either party to a dispute growing out of the interpretation of a railroad labor agreement covering rates of pay desired to progress the dispute beyond the property of the carrier.

Congress made its intention in this regard clear at the beginning of Section 2 of the 1934 Act (45 U. S. C. §151a, Appendix infra, p. 37) by declaring that it was a general purpose of the Act to avoid any interruption to commerce and to provide for the prompt and orderly settlement of all disputes growing out of the interpretation of agreements covering rates of pay for work on the railroads.

To accomplish this purpose the 1934 Act amended Section 3 to establish the National Railroad Adjustment Board (45 U. S. C. §153, First, Appendix infra, p. 37). The major part of the section is devoted to the mechanics of this Board. Then §3 First (i) reads:

> "(i) The *disputes* between an employee or group of employees and a carrier or carriers *growing out of grievances or out of the interpretation or application of agreements concerning rates of pay,* rules or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, *the disputes may be referred* by petition of the parties or *by either party to the appropriate division of the Adjustment Board* with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis supplied.)

Thus the statute provides that disputes growing out of the interpretation of agreements concerning rates of pay, rules, or working conditions should first be handled by the usual course of discussion on the property of the railroad. This procedure was followed by respondent (Complaint, para. 10; R. 4). If such handling is not productive of a

satisfactory result, then either party may progress the matter further if it desires. If there is a system or other agreed board it must go to it. But if there is not, and there is not in most situations, it must go to the Adjustment Board. This accords with the stated purpose of the statute to avoid interruption of rail service and to provide for the prompt and orderly settlement of pay disputes involving the interpretation of collectively bargained railway labor agreements and accords with the statutory duty to exert every reasonable effort to settle disputes.

This Court has consistently held that the National Railroad Adjustment Board is intended by Congress to have exclusive jurisdiction over the interpretation and application of collectively bargained agreements in the railroad industry and that Congress did not intend to permit any interruption by a Federal or State court in the process of adjustment of these minor disputes prior to the time that an award has been made by the Adjustment Board.

This principle was firmly established in *Slocum v. D. L. & W. R. Co.*, 339 U. S. 239 (1950). In that case the Court of Appeals of New York had affirmed a judgment in favor of a railroad carrier in an action it instituted for a declaratory judgment as to rights under collectively bargained labor agreements. This Court reversed, holding that the jurisdiction of the Adjustment Board to adjust disputes of the type involved was exclusive and that it was error for the New York courts to uphold a declaratory judgment interpreting the collective bargaining agreements.

In the *Slocum* case, this Court referred to the history of the handling of disputes over the interpretation of existing bargaining agreements and the passage of the 1934 amendments to the Railway Labor Act (pp. 242-3) and stated (p. 243):

> "* * * The Act thus represents a considered effort on the part of Congress to provide effective and desirable

administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the nation's railway systems."

The Court then referred to its decision in *Order of Railway Conductors v. Pitney*, 326 U. S. 561 (1946), that a court should not have interpreted a railway labor contract, "but should have left this question for determination by the Adjustment Board, a congressionally designated agency peculiarly competent in this field" (p. 244) and concluded:

> "This reasoning equally supports a denial of power in any court—state as well as federal—to invade the jurisdiction conferred on the Adjustment Board by the Railway Labor Act" (p. 244).

On the same day the *Slocum* case was decided this Court, further emphasizing the intent of Congress with respect to the exclusive jurisdiction of the Board, decided *Order of Railway Conductors of America v. Southern Railway Co.*, 339 U. S. 255 (1950). In that case, the railroad commenced an action in a state court against the Order of Railway Conductors seeking a declaratory judgment that the agreement *did not require extra pay for certain services as claimed by the conductors.* The state court proceeded to adjudicate the dispute. This Court reversed the decision of the state court on the ground that the state court was

without power to interpret the agreement and that exclusive jurisdiction was vested by Congress in the Railroad Adjustment Board.

The analogy between the type of dispute involved in the *Southern Railway* case and the dispute involved in the present case is striking. Both involve claims by employees involved in the operation of trains for extra pay for a certain type of service, and this is exactly the type of dispute which Congress intended the National Railroad Adjustment Board to handle exclusively.

This Court in the *Southern Railway* case emphasized the conflicts that could arise from court intervention in minor disputes and then turning to the statutory language said (pp. 256-257):

> "And if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by §3 First (i) of the Railway Labor Act, 45 U. S. C. A. §153 First (i), F. C. A. title 45, §153 First (i), which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board."

The subsequent cases have sustained and strengthened this view that disputes arising out of the interpretation of railway labor agreements may only be submitted to the Railroad Adjustment Board whose jurisdiction is exclusive and may not be taken to court. In *Railroad Trainmen v. Chicago River R. R.*, 353 U. S. 30, 39 (1957), this Court reviewed the legislative history of the Railway Labor Act and held that it was generally understood that the provisions dealing with the Adjustment Board, 45 U. S. C. §153, First, "were to be considered as compulsory arbitration in this limited field." Shortly thereafter in *State of California v. Taylor*, 353 U. S. 553, 558, 559 (1957), this Court held

that the Adjustment Board "was given jurisdiction over 'minor disputes', meaning those involving the interpretation of collective bargaining agreements in a particular set of facts" and characterized Section 153 First, as "compulsory arbitration".

These clear cut decisions were foreshadowed by the extensive discussion of the Railway Labor Act in *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711 (1945). In that case the narrow issue upon which the decision rested was whether the union, as agent of employees, had authority by virtue of the Act or otherwise, either to compromise and settle claims of certain employees or submit them for determination by the Adjustment Board. However, the Court gave every indication that the Railway Labor Act provided mandatory machinery for the adjustment of minor disputes when not settled within the railroad organization.

In *Transcontinental Air v. Koppal*, 345 U. S. 653, 660 (1953), this Court emphasized that the Railway Labor Act "provides a procedure (the Adjustment Board) for handling grievances so as to avoid litigation and interruptions of service * * *." In truth, the Adjustment Board was established for those very purposes.

The Railway Labor Act and the cases above cited which have interpreted the act, show beyond any doubt that the National Railroad Adjustment Board has exclusive jurisdiction of disputes involving the interpretation of railway labor agreements, specifically including disputes involving claims for additional pay under such agreements. The subject matter of the respondent's claim here is additional compensation based on his interpretation of a collectively bargained railway labor agreement—the same subject matter that the *Southern Railway*, *Chicago River*, and *Taylor* cases held was within the exclusive jurisdiction of the Adjustment Board.

Similar results have been reached by the Courts of Ap-

peal for the Fifth, Seventh and Tenth Circuits, which have held that where the dispute concerns a wage provision of a collective bargaining agreement made pursuant to the Railway Labor Act and can be resolved by an interpretation of the agreement, exclusive jurisdiction lies in the National Railroad Adjustment Board or system board where one exists. *Sigfred v. Pan American Airways*, 230 F. 2d 13 (C. A. 5, 1956), cert. den. 351 U. S. 925; *Buster v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 195 F. 2d 73 (C. A. 7, 1952); *Walters v. Chicago & North Western Ry.*, 216 F. 2d 332 (C. A. 7, 1954); *Switchmen's Union v. Ogden Union Ry.*, 209 F. 2d 419 (C. A. 10, 1954), cert. den. 347 U. S. 989.

II. The only exception to the exclusive jurisdiction of the National Railroad Adjustment Board in such disputes is the common law or statutory suit by an employee for damages for wrongful discharge.

Against the tide of this established doctrine, the Court of Appeals below in support of its holding relied heavily upon the case of *Moore v. Illinois Central R. Co.*, 312 U. S. 630 (1941). That case arose out of the alleged illegal discharge of Moore and this Court held that Moore could bring a common law action for wrongful discharge in court and was not required to resort to the Adjustment Board.[1]

The holding in the *Moore* case represents the only deviation from the principle of the exclusive jurisdiction of the National Railroad Adjustment Board in disputes involving

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[1] Moore was discharged on February 15, 1933, before passage of the 1934 Amendments to the Railway Labor Act, **Moore v. Illinois Central R. Co.**, 180 Miss. 276 (1937). Denial to Moore of the right to bring a common law action for wrongful discharge, on the basis of the 1934 Amendments, might well have involved serious constitutional problems.

interpretation of railway labor agreements. The *Moore* case was decided nine years before *Slocum* and was carefully distinguished by this Court in the latter decision, in the following language (339 U. S. at pp. 244-5):

> "Our holding here is not inconsistent with our holding in *Moore v. Illinois Central R. Co.*, 312 U. S. 630. Moore was discharged by the railroad. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. As we there held, the Railway Labor Act does not bar courts from adjudicating such cases. A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide, and does not involve questions of future relations between the railroad and its other employees. If a court in handling such a case must consider some provision of a collective-bargaining agreement, its interpretation would of course have no binding effect on future interpretations by the Board.
>
> "We hold that the jurisdiction of the Board to adjust grievances and disputes of the type here involved is exclusive.[7] The holding of the *Moore* case does not conflict with this decision, and no contrary inference should be drawn from any language in the *Moore* opinion."

"[7] We are not confronted here with any disagreement or conflict in interest between an employee and his bargaining representative, as in *Steele v. Louisville & N. R. Co.*, 323 U. S. 192. Nor are we called upon to decide any question concerning judicial proceedings to review board action or inaction."

This Court thus limited and distinguished the *Moore* case on the ground that Moore's suit for damages for wrongful discharge differed from any remedy which the National Railroad Adjustment Board had power to provide, since the Board could grant only reinstatement in service and back pay. Additionally, the Court pointed out that when Moore accepted his discharge as final he ceased to be an employee, that Moore's court action did not involve questions of future relations between the railroad and its other employees and that consideration by the court of provisions of the collective bargaining agreement, to the extent necessary in the action for wrongful discharge, would have no binding effect on future interpretations by the Board.

It is significant that the Court went on to deny expressly the existence of any conflict between the general principles expressed in *Slocum* and the special situation found in the *Moore* case.

Consistently since the *Slocum* decision the courts have accepted jurisdiction in wrongful discharge suits only and have left wage claims and other disputes over the interpretation and application of railroad labor agreements to the Adjustment Board. See among others *Brooks v. Chicago R. I. & P. R. R. Co.*, 177 F. 2d 385 (C. A. 8, 1949); *Butler v. Thompson, et al.*, 192 F. 2d 831 (C. A. 8, 1951); *Broady v. Illinois Central R. R. Co.*, 191 F. 2d 73 (C. A. 7, 1951); *Broome, et al. v. Louisville & Nashville R. R. Co.*, 194 Tenn. 249, 250 S. W. 2d 93 (Supreme Court of Tennessee, 1952); *Switchmen's Union, et al. v. Ogden Union Ry. & Depot Co.*, 209 F. 2d 419 (C. A. 10, 1954), cert. den. 347 U. S. 989; *Walters v. Chicago & North Western Railway*, 216 F. 2d 332 (C. A. 7, 1954).

The Court of Appeals below extended what it conceived to be the holding of the *Moore* case to cover respondent's suit—a claim for additional compensation, based on respondent's interpretation of the applicable collectively bargained agreement, which arose while respondent was an

active railroad employee, was handled by him or his representatives under the applicable grievance procedure on the railroad, and is clearly within the exclusive jurisdiction of the Adjustment Board under this Court's decision in the *Slocum* case, unless the principles established in *Slocum* are nullified by respondent's retirement.

Although the court below recognized that "the courts have consistently drawn a distinction between those cases in which the employee, having been discharged, accepts his discharge, and those in which he seeks a judicial interpretation of a collective bargaining agreement and enforcement of his employment rights in such a manner as to affect future relations between the railroad and other employees" (R. 35), it placed respondent's claim for additional wages in the same category as a suit for wrongful discharge and held it to be within the jurisdiction of the federal courts. The gist of the decision below is found in the following language (R. 37):

> "Here, as in the Moore case, the employer-employee relationship has been terminated; the substantive issue is whether something is owing to the plaintiff. While the court may have to consider a provision of a bargaining agreement, its interpretation would have no binding effect upon future interpretations by the Board, and the future relations between the carrier and its other employees are not involved. Since the claimant in the Moore, or in the instant, situation, is not an employee, there does not exist the unhappy discontent among co-employees because of dissimilar treatment for similar work."

Thus the Court of Appeals held that because respondent was no longer an employee when suit was brought, because the court's interpretation of agreement provisions would have no binding effect on future interpretations by the Ad-

justment Board, and because it believed future relations between the railroad and its other employees were not involved, respondent could maintain his action for wages in court.

It is evident that the holding below ignored the principle bases upon which the Court distinguished the special situation of the *Moore* case when this Court adopted the general principle of the *Slocum* decision. The court below failed even to mention that this Court in *Slocum* distinguished the *Moore* case on the basis that Moore's action for wrongful discharge constituted a remedy which the Adjustment Board could not provide. In the present case respondent, by an award of the Adjustment Board, could unquestionably secure the additional wages claimed. The chief circumstances which led to this Court's decision in the *Moore* case, therefore, finds no parallel in the present case. Respondent has a full and adequate remedy in the Adjustment Board, unless the decision below can be construed to mean, as alleged in the complaint (para. 10; R. 4) that following respondent's retirement the Board had no jurisdiction to handle his claim.

Apart from *Moore*, the court below relied only on the decision of the Court of Appeals for the First Circuit[2] in

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[2] The current thinking of the Court of Appeals for the First Circuit toward the jurisdiction of the Adjustment Board was expressed in **Duplisea v. Maine Central Railroad**, 260 F. 2d 495 (C. A. 1, 1958), where it said:

> "Thus Congress not only failed expressly to create a special jurisdiction in the federal courts for adjudication of claims based on violations of such (railroad) collective bargaining contracts, but Congress in fact did create such a jurisdiction in an administrative body. As stated in **Starke v. New York, Chicago & St. Louis R.R. Co.**, 180 F. 2d 569, 573-574 (C. A. 7th, 1950):
>
> 'Congress having specifically conferred upon the Adjustment Board the authority to hear and determine plaintiff's grievance. it is not in the absence of express language to be implied that it also intended to confer jurisdiction upon the courts. Such a holding * * * would seriously impair if not destroy the usefulness of the Act and the purpose which Congress sought to achieve.'"

Cepero v. Pan American Airways, 195 F. 2d 453 (1952), cert. den. 344 U. S. 840, re-hearing den. 344 U. S. 882. The basic issue in the *Cepero* case was the validity of a collective bargaining agreement. No question of interpretation thereof was involved. On finding the agreement valid the First Circuit affirmed the judgment of the District Court, dismissing the complaint, and made only a reservation that the Lower Court could inquire into a wrongful discharge issue if present. The instant matter involves neither the validity of a collective bargaining agreement nor an issue of wrongful discharge so the *Cepero* case is clearly distinguishable. Since no question of *interpretation* of a collective bargaining contract was involved in the *Cepero* case it was not necessary for the Court in that case to speculate whether or not a wage claim by an employee out of service stood on a different footing from an alleged wrongful discharge action.

It is submitted that in aligning the present case with *Moore*, and thence concluding that the federal court had jurisdiction, the court below was in error. There are serious and compelling reasons, discussed below, for upholding the exclusive jurisdiction of the National Railroad Adjustment Board over claims of railroad employees under collective bargaining agreements, where such claims arise or are based on occurrences taking place during their employment, regardless of the status of the employees at the time the claims are ripe for Board handling.

III. Where the claimant is an employee at the time his claim for extra pay accrues under a railroad collective bargaining agreement, the intent of the Railway Labor Act is that the dispute falls within the exclusive jurisdiction of the Adjustment Board regardless of claimant's subsequent status.

It is undisputed that this controversy arose out of the provisions of a railroad collective bargaining agreement, that at the time the controversy arose the claimant Charles DePriest was an employee of the petitioner railroad and that he continued to be an employee of the railroad during all periods in which he performed services on which his claims are based.

As has been discussed, it is well established by this Court that the National Railroad Adjustment Board has exclusive jurisdiction to adjudicate such disputes between carriers and their employees. The Court of Appeals below, however, in directing that these claims be returned to the trial court for further proceedings, was of the opinion (R. 37) that because the active employer-employee relationship between DePriest and the railroad had been terminated, the district court had jurisdiction. Thus, the court below in substance, held that the claimant, Charles DePriest, by voluntarily retiring subsequent to the accrual of his alleged cause of action thereby vested the federal court with jurisdiction.

It is submitted that the court below, in so holding, proceeded on the erroneous assumption that the primary distinction between the *Moore* case and the *Slocum* case is merely whether an active employment relationship does or does not still exist between the employee or employees involved and the carrier. The court also pointed out that, as in *Moore*, the court's interpretation of the agreement would

not be binding on the Adjustment Board, and would not affect future relations between petitioner and its employees. These latter findings, however, if true, simply follow from the basic holding that termination of the active employee relationship gives the courts jurisdiction.

It is submitted, however, that the real and most important distinction between *Moore* and *Slocum* is that Moore's court action for wrongful discharge afforded him a remedy which the Adjustment Board could not provide. In both decisions this Court held that by creating the National Railroad Adjustment Board Congress did not intend to take away from the railroad employee the remedy, available at common law or by statute, of recovering damages from his railroad employer for wrongful discharge. The Board could afford a discharged employee only reinstatement and back pay, and it was held that Congress did not intend to require the employee to seek reinstatement.

Furthermore, the *Slocum* and *Moore* cases taken together clearly limit jurisdiction of courts to actions for wrongful discharge. Any sort of claim by an employee who has voluntarily retired is clearly not a wrongful discharge action, and can clearly be distinguished from such an action. The issue in a suit for wrongful discharge such as that permitted in *Moore* is whether the employer acted wrongfully in terminating the employee's employment against the will of the latter. It is an action for breach of contract under certain limited circumstances. This limited type of breach of contract action is the only one over which courts have jurisdiction in connection with railroad contracts. Obviously no such issue is raised in the present case where DePriest's termination of employment was brought about by his voluntary action.

In the present case nothing is taken from respondent in requiring progression of the dispute to the Adjustment Board. A claim arising under a collective bargaining agree-

ment for additional compensation, such as that of Charles DePriest, is simply a claim for a fixed amount which can readily be awarded to the employee by the Board. The Board does have power to interpret the agreement involved in this action, to decide whether or not the respondent's claims for extra pay for alleged service performed as a railroad employee are justified by the agreement, and to order the petitioner to make such payment. No different basis of recovery is available through court action. Consequently the most impelling consideration for court jurisdiction is not present here as it was in *Moore*.

Furthermore, it is submitted that the holding of the court below, that a court's interpretation of a collective agreement in a claim for additional compensation by a retired employee would not affect future relations between petitioner and its employees, is erroneous. This conclusion is based solely on the presumed physical absence of an employee after his separation from active service. However, the situation is entirely different from that in *Moore*. A discharged employee does not leave behind him in active service other employees with the same claims based on alleged wrongful discharge, but an employee who carries with him wage claims when he retires or otherwise terminates employment does leave behind other and active employees who have or may in the future have identical wage claims against the railroad.[3] This occurred in the case of DePriest's retirement (R. 9-18, 28).

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[3] In **Marchitto v. Central Railroad Company of New Jersey**, 18 N. J. Super. 163, 86 A. 2d 795 (App. Div. 1952), cert. den. 9 N. J. 403, 88 A. 2d 537 (Supreme Ct. of N. J. 1952), there was an action by a railroad employee for additional earnings claimed under a collectively bargained agreement. It was held that the court had no jurisdiction and that exclusive jurisdiction was lodged in the National Railroad Adjustment Board. In that case, the Appellate Division said:

> "Additionally, plaintiff contends that 'the case **sub judice** is one for money damages only; that in no wise does it affect the future labor relationship of himself or any other employees'. We think that it is reasonably within the realm of probability that there

Assume that a train crew, consisting of conductor and three brakemen, working under the same agreement, performs some service for which the crew members claim extra pay. The claims are denied by the railroad. The conductor retires, and in accordance with the decision below brings suit for the additional compensation. The claims of the other three men, based on the same agreement and service, must go to the Adjustment Board under the *Slocum* decision. The Board denies the brakemen's three claims; the court holds in favor of the conductor and awards him the extra pay.

Here the relationshfp of the railroad and its employees is indeed affected, and adversely, by the obvious dissatisfaction of the employees who have lost their claims, a dissatisfaction which may well extend not only to the railroad but also to the representatives of the employees affected and to the Board itself. This example indicates that the effect of the decision below may well be to aggravate the industry's problems with regard to claims and grievances of the type which was characterized by this Court in the *Slocum* case as "a potent cause of friction leading to strikes" (339 U. S. at p. 242).

Petitioner has generally assumed in this brief that the meaning of the decision below is that the courts and the Adjustment Board have concurrent jurisdiction over claims by retired employees arising out of service performed by them prior to retirement. Although the approach of the court below was basically that DePriest was no longer an

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are other individual employees who may be now, or in the future, similarly situated and who will be affected by the determination of this action. Can it, therefore, be successfully asserted that a determination of this issue will not disturb the future relationship of the railroad and its employees and result in a rupture of the employer-employee relationship, thereby causing a severance of interstate commerce? We think not."

"employee", and the court quoted the statutory definition of "employee" in 45 U. S. C. Section 151 Fifth, as well as the statement of the Board's jurisdiction over disputes between carriers and their employees in 45 U. S. C. Section 153 First (i) (R. 34), there is no flat holding that the Board had no jurisdiction over DePriest's claim after his retirement. Such a holding, denying the benefits of Board procedure to retired and other out of service employees because their claims were not disposed of before employment terminated, would appear contrary to the intent of Congress, but it is submitted that it is equally inconsistent to reach a result that gives the Adjustment Board exclusive jurisdiction over such claims when presented by active employees (under the *Slocum* decision) and concurrent jurisdiction to the courts and the Board, when handled by retired employees and others who have just left active service.

As pointed out above, the most compelling reason for exclusive and compulsory Board jurisdiction is to prevent labor unrest and strife in the railroad industry. Concurrent jurisdiction by the courts and the Board over identical wage claims carries the implicit threat of dissatisfaction and trouble between railroads and their employees, and is directly opposed to the interpretations of the Railway Labor Act heretofore adopted by this Court.

It should be pointed out that a claim or grievance may be referred by "either party" to the Adjustment Board, 45 U. S. C. Section 153, First (i). Thus, under the statutory language it is not necessary that such a dispute be referred to the Adjustment Board by a person who is, at the time of referral, an "employee". It may be referred by "either party" to the dispute—which may be the railroad or, as in this instance, the respondent.

The Adjustment Board will not refuse to docket and handle a claim merely because the claimant has applied for an annuity under the Railroad Retirement Act and vol-

untarily relinquished his right to return to service. The retirement of an employee from active service has never been held to deprive the Board of its jurisdiction over an employee's claims, the subject matter of which is within the Board's jurisdiction. The Railroad Adjustment Board has accepted and decided numerous claims by retired employees. In support of the motion to dismiss before the District Court there were filed certified examples of awards in such cases by the Board (Awards Nos. 11888, 12418, 15406, 16129 and 1420). As an example Award 15406 is printed at R. 29. Moreover, the Adjustment Board has taken jurisdiction of claims for wages even though the employees in question were deceased. Affidavit of H. D. Kruggel, R. 28; see also Award No. 2422 of the National Railroad Adjustment Board, Third Division.

It is submitted that in the decision below the plain meaning and purpose of Section 153, First (i) was lost sight of, particularly the clear intent of that section that the nature of the dispute is paramount, not the status of the claimant after the facts giving rise to the dispute have materialized. If the Board and the courts have concurrent jurisdiction, the "races of diligence" decried in the *Southern Railway Co.* case would be fostered, a situation which the exclusive jurisdiction of the Adjustment Board effectively prevents.

It is again emphasized that the cause of action alleged in the instant case is based upon facts which occurred at a time when the claimant was in the active service of the petitioner and prior to the time of his voluntary retirement. The claim grew out of his employment relation with the petitioner. His claims were made to the petitioner as an employee. The dispute from its inception was between the petitioner and the claimant as an employee. This is not a cause of action which has arisen since the termination of the claimant's active employee status with the railroad by retirement or out of any action taken by him with respect to his retirement.

It thus clearly appears in the case here involved that there is a dispute between one who is seeking to enforce alleged rights as a railroad employee and a carrier involving the "interpretation" of an agreement "concerning rates of pay". As has been discussed, the Act provides that any party interested in the dispute may refer the dispute to the Board. The fact that the respondent bases his suit upon a railway labor agreement shows his interest in the interpretation of the agreement with regard to extra pay and that he could have applied to the Adjustment Board. It is submitted that if a dispute arises between a carrier and a person who is an employee at the time of the occurrence which gives rise to it and the claim is based upon happenings which occurred while the claimant is an employee, the dispute is one between a "carrier" and an "employee" within the meaning of the Railway Labor Act, even though the employment relation may be terminated at a later date.

Congress intended that disputes involving the wage claims of employees should be progressed in the usual manner through the operating officers of the carrier and then, failing settlement, must go to the Adjustment Board if further proceedings are desired by either party. Obviously, a claim for wages by an employee who, subsequent to the completion of the incident out of which the claim arose, voluntarily relinquished his right to service, falls within this congressional intent and must be brought before the Adjustment Board and cannot be taken in the first instance to any court in the land happening to have jurisdiction over the person of the defendant. The opinion below leads to the ultimate and erroneous conclusion that any railroad employee, by retiring, resigning or otherwise leaving active service could by-pass the Adjustment Board and thus defeat the purpose of Congress and avoid the plan established by that body.

IV. The courts will be opened to extensive railroad labor litigation if the inactive status of a railroad employee vests the courts with jurisdiction over pay claims within the power of the Adjustment Board to determine.

The decision of the court below allows an action in the federal courts which is inconsistent with the orderly procedure provided by Section 3, First, of the Railway Labor Act for the National Railroad Adjustment Board to determine disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *." From the legislative history of Section 3, First, which was extensively reviewed by this Court in the *Chicago River* and *Taylor* cases, supra, it is certain that the Adjustment Board was created to compel disputes over the interpretation of agreements, such as presented by the respondent here, if processed beyond the carrier, to be taken exclusively to the Adjustment Board where special knowledge and skills, not within the conventional experience of judges, can be applied.

Examination of the provisions of the agreement involved in this case will show that they contain terminology peculiar to the railroad industry, such as "switching limits", "yard", "road service", "yard-belt", "transfer service", "belt line service"; etc. (R. 2, 3). The proper application of such provisions to particular situations requires knowledge with respect to various phases of railroad operation, operating practices, etc. The interpretation of this type of provision is a function of the exact nature which this Court had in mind when it said in the *Slocum* case that the members of the Adjustment Board understand railroad problems and speak the railroad jargon (339 U. S. at page 243).

To permit the jurisdiction of a federal district court to be

invoked to decide a dispute as to the meaning of a wage provision of a railroad collective bargaining agreement is to invade the exclusive jurisdiction over disputes of that type which Congress gave to the Adjustment Board. The position adopted by the court below rejects the basic assumption of the Railway Labor Act that disputes over the meaning of railroad collective bargaining agreements should be settled exclusively within the confines of the structures erected by the Act. It opens the door to conflicting interpretations of such agreements by the Adjustment Board on one hand a variety of courts on the other, thereby dooming the uniformity, intended by Congress, which is attainable only within the statutory procedures.

The decision below further upsets the orderly procedure of the Railway Labor Act since it is not confined in its reach to pay-claims under agreements by retired employees.[4] The language used by the court below might be held to justify invoking the jurisdiction of a court whenever the active employer-employee relationship no longer existed, even though the dispute concerned rates of pay, rules or working conditions under the collective bargaining agreement. Such situations might involve claims by inactive employees on furlough, out of service because of illness or disability, absent in military service, voluntarily resigning, or out of active service for any other reason. Either the out of service employee or the Railroad might go into court to get an interpretation of the agreement. A veritable Pandora's box would thereby be opened, throwing into

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[4] This class alone is large. In 1956-1957 retired railroad employees receiving benefits under the Railroad Retirement Act totaled 361,000, as reported in the Annual Report (p. 1) of the Railroad Retirement Board for the fiscal year ended June 30, 1957. H. R. Doc. No. 278, 85th Cong., 2d Sess. 1 (1958). In the year ending June 30, 1958 the Board granted retirement annuities to 42,100 retiring employees. 19 **The Monthly Review** No. 8, August, 1958 at p. 2. Many employees at retirement have claims or grievances pending against their employers.

federal district courts, or for that matter, state courts, a host of issues arising out of the disputed application and interpretation of collective bargaining agreements. Here again the basic and vital provision of the Act—the exclusiveness of the Act's procedures—would be grossly violated.

The holding of the court below leads to the conclusion that any railroad employee by retiring or resigning could by-pass the Adjustment Board and thus defeat and avoid the plan established by the Congress and lead to unrest among other employees having similar claims who are required to go before the Adjustment Board. Such an unrealistic approach does extreme violence to the announced plan of the Railway Labor Act to provide a procedure for interpreting labor contracts and settling disputes which would avoid serious conflicts between carriers and employees.

As pointed out above, while the lower court did not specifically decide whether the National Railroad Adjustment Board had concurrent jurisdiction with the courts or whether the courts alone had jurisdiction over claims by out-of-service employees, there is a strong possibility that the latter view governed the decision. Such a holding would, of course, deprive retired and other out-of-service employees of the Adjustment Board remedy provided by the Railway Labor Act, and in view of the new limits on the diversity jurisdiction of the Federal Courts as a practical matter would relegate most such claims to the state courts. The assumption of jurisdiction by the court below on any theory, if sustained, would make the administration of collective bargaining agreements in the whole railroad industry chaotic. This confusion is detrimental to the best interests of the carriers and their employees and is apt to aggravate the handling of minor disputes in the industry.

The final order of the District Court herein was "that the defendant's Motion to dismiss the action be granted because the Court lacks jurisdiction over the subject matter of the Complaint * * *" (R. 25). This is altogether consistent with the ground urged below by the petitioner for dismissal and the foregoing argument herein. All rest on the clear intent of Congress as unequivocally expressed in the Railway Labor Act, that the National Railroad Adjustment Board has exclusive jurisdiction over the subject matter of disputes, like that here, involving the interpretation of railway labor agreements concerning rates of pay.

It is submitted that by holding the procedure of Section 3, First (i) to be solely applicable to the determination of such disputes, rather than resort to the courts, the pattern of judicial construction of the Railway Labor Act in the light of Congressional intent will be preserved.

CONCLUSION.

Petitioner submits that in the above argument it has shown:

(1) The history of the Railway Labor Act and the decisions of this Court construing the Act establish that the National Railroad Adjustment Board has exclusive jurisdiction to hear and determine disputes growing out of the interpretation of railway labor agreements covering rates of pay, rules and working conditions.

(2) A claimant, who was an active employee of a railroad at the time of accrual of his claim growing out of the interpretation of a pay clause of a collective bargaining agreement, must submit the disputed claim to the National

Railroad Adjustment Board, or system board, if he desires to progress it beyond the property of the railroad. Under no circumstances can he by-pass the Adjustment Board and take such a dispute to court, regardless of whether he retired or otherwise became an inactive employee after his claim accrued. Congress did not intend to open the federal and state courts to these numerous disputes which have unique problems not ordinarily within a court's experience.

(3) Only by the exclusive application of the administrative machinery provided by Section 3, First (i) of the Railway Labor Act can the interpretation of provisions in a railroad labor agreement be handled in a manner which will avoid dissatisfaction among employees and avoid confusion and uncertainty in the railroad industry.

(4) Congress has provided in the Railway Labor Act an express administrative procedure for the determination of the extra pay dispute raised by respondent which is dependent upon the interpretation of a railroad collective bargaining agreement. Under the Act, the Adjustment Board can give a complete remedy—back pay. The holding of the court below that this dispute is to be determined judicially is in direct conflict with the past interpretation of the Railway Labor Act to the effect that Congress vested exclusive jurisdiction over this subject matter in the Adjustment Board. The presence of this administrative machinery divests the courts of jurisdiction to determine the dispute.

Petitioner therefore respectfully requests this Court to reverse the judgment of the Court of Appeals below and to affirm the judgment of the United States District Court

for the District of New Jersey dismissing respondent's complaint for lack of jurisdiction of the subject matter.

Respectfully submitted,

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APPENDIX.

RELEVANT STATUTORY PROVISIONS.

Sections 1, 2 and 3 of Title I of the Railway Labor Act, as amended (48 Stat. 1185, 1186, 1189, 54 Stat. 785, 786, 64 Stat. 1238; 45 U. S. C. §§151, 151a, 152, 153) provide in part as follows:

"Section 1. When used in this Act and for the purposes of this Act—

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': *Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by

electric power falls within the terms of this proviso. The term 'carrier' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

"Second. The term 'Adjustment Board' means the National Railroad Adjustment Board created by this Act.

* * *

"Fifth. The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

* * *

"Section 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

* * *

"Section 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after the approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any

original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of paragraph (f) of this section shall receive

from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective, and, if the award includes

a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after."

* * *